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ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 IO-13 FEA-01 AGR-05 CEA-01

CIAE-00 COME-00 DODE-00 FRB-03 H-02 INR-07 INT-05

L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15

STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 OMB-01

XMB-02 OPIC-03 JUSE-00 FTC-01 /112 R

DRAFTED BY EB/IFD/BP:HJWINTER/TASCHLENKER/LSALLAN:BT

APPROVED BY EB/IFD/BP:HARVEY J. WINTER

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L/EB:SBENSON

EB/ISM:AKOBLER

EB/ISM:RRUEBENSAAL

EB/OT/TA:TO'HERRON

EUR/RPE:RBRESLER

JUSTICE/ANTITRUST:JDAVIDOW

FTC:WGRIMES

FTC:CHEVENER

COMMERCE/BDC:TPGILLET

COMMERCE/B/EPR:RFRANCIS

COMMERCE/OIFI/FBP:JSIEGMUND

COMMERCE/DIBA:RHUMBERT

AGRICULTURE/ASCS:DAHALT

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INTERIOR/BUR MINES:WSTOWASSER

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FM SECSTATE WASHDC

TO USMISSION EC BRUSSELS PRIORITY

AMEMBASSY PARIS PRIORITY

INFO AMEMBASSY BONN

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

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AMEMBASSY THE HAGUE

AMEMBASSY LONDON
AMEMBASSY LUXEMBOURG
AMEMBASSY ROME

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E.O. 11652: N/A

TAGS: ETRD, EIND, ECEM, EEC

SUBJECT: U. S. PHOSPHATE FERTILIZER EXPORTS

REFS: A) PARIS 21828, B) EC BRUSSELS 7548, C) PARIS 22681,
(D) PARIS 194150

1. PROBLEMS FACING EUROPEAN FERTILIZER PROCESSING INDUSTRY AND ALLEGATIONS OF "DUAL PRICING" PRACTICES OF U.S. PRODUCERS OF PHOSPHATE ROCK AND PHOSPHATE BASED FERTILIZERS WERE SUBJECT OF INTERAGENCY MEETING ON AUGUST 6. CONSENSUS OF MEETING WAS THAT WHILE ISSUE WAS EXCEEDINGLY COMPLEX NO VIOLATION OF U.S. LAW HAS BEEN SHOWN YET, THAT MORE DETAILED INFORMATION IS REQUIRED PRIOR TO ANY FORMAL CONSULTATION, AND THAT ISSUE AT PRESENT SHOULD BE CONSIDERED PRIMARILY IN THE CONTEXT OF NORMAL COOPERATION BETWEEN U.S. AND EC ANTITRUST OFFICIALS.

2. THERE ARE TWO EXPORT ASSOCIATIONS, PHOSPHATE ROCK EXPORT CORPORATION (PHOSROCK) AND PHOSPHATE CHEMICAL EXPORT ASSOCIATION (PHOSCHEM), WHICH HAVE BEEN DULY REGISTERED WITH THE FEDERAL TRADE COMMISSION (FTC) UNDER THE WEBB-POMERENE ACT (EXPORT TRADE ACT OF 1918) AS COMBINATIONS ENGAGED SOLELY IN EXPORT TRADE. AS A CONSEQUENCE, THEIR EXPORT ACTIVITIES ARE EXEMPT FROM U.S. ANTITRUST

LAWS, PROVIDED THESE ACTIVITIES DO NOT RESTRAIN TRADE WITHIN THE U.S. OR RESTRAIN THE EXPORT TRADE OF U.S. COMPETITORS. WHILE THESE ASSOCIATIONS MAY AGREE UPON EXPORT PRICES, SUBSEQUENT COURT DECISIONS HAVE HELD THAT THEY MAY NOT DO SO IN COLLUSION WITH FOREIGN PRODUCERS
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(I.E. THEY MAY NOT PARTICIPATE IN INTERNATIONAL CARTELS). THE GROUPS ALSO MAY NOT COLLUDE WITH EACH OTHER ON RELATIVE PRICES OF PHOSPHATE ROCK AND PHOSPHATE FERTILIZER.

3. ON THE BASIS OF INFORMATION PRESENTLY AVAILABLE, THERE IS NO EVIDENCE THAT THERE IS ANY ILLEGAL DUAL PRICING OF PHOSPHATE ROCK OR ANY OTHER ILLEGAL ACTIVITY BY PHOSROCK OR PHOSCHEM. EXPORT PRICES ARE BEING FIXED

BY PHOSROCK (AND PHOSCHEM). OPEN MARKET SALES IN THE U.S. OF PHOSPHATE ROCK ARE SMALL BECAUSE MOST OF IT IS CONSUMED BY VERTICALLY INTEGRATED PRODUCERS OF PRODUCERS WITH LONG-TERM CONTRACTS. AS FAR AS THE DOMESTIC U.S. MARKET IS CONCERNED, PRICES ARE COMPETITIVELY SET BY INDIVIDUAL FIRMS AND THUS NOT ALL PHOSPHATE ROCK PRODUCERS CHARGE THE SAME PRICE AND NOT EVERY BUYER IS CHARGED THE SAME PRICE. FURTHER, AS REGARDS THE DIFFERENTIAL IN EXPORT AND DOMESTIC PRICES, IT SHOULD BE REALIZED THAT MUCH ROCK IS BOUGHT THROUGH LONG-TERM CONTRACTS. AMERICAN OR FOREIGN FIRMS, WHICH SIGNED CONTRACTS YEARS AGO, ARE PAYING MUCH LESS THAN THE CURRENT MARKET PRICE. ALSO, MUCH ROCK IS TRANSFERRED TO AFFILIATES AT AN INTERNAL PRICE UNRELATED TO SPOT MARKET PRICES.

4. ANOTHER FACT THAT SHOULD BE TAKEN INTO ACCOUNT IS THE COMPETITIVE SITUATION IN WESTERN EUROPE; IT WOULD APPEAR THAT PHOSROCK IS NOT IN A DOMINANT POSITION IN THAT MARKET, ACCOUNTING FOR LESS THAN 20 PERCENT OF SALES TO WESTERN EUROPE. PHOSROCK'S EXPORT PRICES THUS REFLECT A WORLD MARKET PRICE BEYOND PHOSROCK'S CONTROL, AND INDEED GENERALLY ARE SLIGHTLY BELOW THAT OF WORLD PRICE. THE MOROCCAN PRODUCER, OCP, HAS ALWAYS BEEN THE DOMINANT SELLER OF ROCK IN EUROPE. IT IS, OF COURSE, GEOGRAPHICALLY MUCH CLOSER TO THAT MARKET THAN ARE U.S. EXPORTERS. FURTHER, TUNISIA AND SENEGAL HAVE ALSO TRADITIONALLY SUPPLIED ROCK TO THE EUROPEAN MARKET. IN ADDITION TO FACING VIGOROUS COMPETITION FROM THESE SOURCES AND OTHER FOREIGN ROCK PRODUCING COUNTRIES (E.G. USSR), PHOSROCK MUST ALSO COMPETE WITH OTHER MAJOR U.S. ROCK PRODUCERS, SWIFT, MOBIL, TEXAS GULF AND OTHERS, NONE OF WHOM ARE MEMBERS OF PHOSROCK. PHOSROCK MEMBERS ALSO EXPORT OVER AND ABOVE THEIR COMMITMENT TO WEBB-POMERENE ASSOCIATION. LIMITED OFFICIAL USE

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5. DEPARTMENT OF JUSTICE ANTITRUST DIVISION HAS HAD U.S. FERTILIZER INDUSTRY UNDER FEDERAL GRAND JURY INVESTIGATION FOR SOME MONTHS. A NEW FEDERAL GRAND JURY HAS BEEN CONVENED BY JUSTICE TO CONCENTRATE SPECIFICALLY ON THE PHOSPHATE FERTILIZER INDUSTRY. ONE IMPORTANT ASPECT OF ANTITRUST INVESTIGATION IS WHETHER THERE HAS BEEN ANY COLLUSION BETWEEN U.S. PHOSPHATE SELLERS AND MOROCCAN OR OTHER FOREIGN PHOSPHATE ROCK PRODUCERS. AS NOTED ABOVE, SUCH COLLUSION WOULD PROBABLY CONSTITUTE GROUNDS FOR U.S. ANTITRUST ENFORCEMENT ACTION.

6. AS REPORTED IN REFTTEL B, JUSTICE ANTITRUST DIVISION HAS CONFIRMED THAT IT HAS BEEN APPROACHED BY EC DELEGATION IN WASHINGTON ON THIS MATTER. EC DELEGATION HAS

ASKED JOEL DAVIDOW, CHIEF, FOREIGN COMMERCE SECTION, ANTITRUST DIVISION, WHETHER HE COULD COME TO BRUSSELS IN SEPTEMBER AND DISCUSS U.S. PHOSPHATE INDUSTRY AND PHOSPHATE WEBB-POMERENE ASSOCIATIONS. DAVIDOW HAS AGREED WITH THE UNDERSTANDING THAT HE CANNOT REPEAT NOT DISCUSS THE SPECIFIC EVIDENCE OBTAINED IN CONNECTION WITH THE FEDERAL GRAND JURY INVESTIGATION SINCE IT IS SUBJECT TO RULE OF SECRECY. SUCH MEETINGS ARE ROUTINELY HELD AS MATTER OF COOPERATION BETWEEN U.S. AND EC ANTITRUST OFFICIALS. FYI. DEPARTMENT OF JUSTICE WOULD PREFER THAT THIS MEETING BE CONSIDERED IN THE NATURE OF INFORMAL DISCUSSIONS AND NOT FORMAL CONSULTATION UNDER THE OECD RECOMMENDATIONS ON RESTRICTIVE BUSINESS PRACTICES OF 1967 AND 1973. AS TO THE REFERENCE IN REFTEL B TO GATT DECISION ON RESTRICTIVE BUSINESS PRACTICES OF NOVEMBER 13, 1960, WE WILL COMMENT ON THIS AT SUCH TIME AS EC COMMISSION SEEKS CONSULTATION UNDER THAT DECISION. END FYI.

7. WE REALIZE THAT POSSIBILITY STILL EXISTS THAT INDIVIDUAL EC MEMBER STATES (E.G. IRELAND) MAY RESORT TO GATT ARTICLE 19. SUCH AN ACTION WOULD, OF COURSE, REQUIRE CONSULTATIONS BETWEEN SUPPLIER AND IMPORTING COUNTRIES AND WOULD ALSO ENTAIL COMPENSATION. WE GATHER FROM REFTEL B THAT EC COMMISSION IS INTERESTED IN DEFERRING ANY SUCH ACTION AS IS UNITED STATES. LIMITED OFFICIAL USE

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8. ACTION FOR USEC BRUSSELS. IN VIEW OF FOREGOING DEPARTMENT BELIEVES THAT THIS PROBLEM SHOULD CONTINUE TO BE TREATED INFORMALLY UNTIL MORE FACTS ARE OBTAINED AND IT IS DETERMINED THAT A PROBLEM CLEARLY EXISTS. FORMAL CONSULTATIONS UNDER OECD PROCEDURES OR GATT SHOULD BE AVOIDED TO THE EXTENT POSSIBLE. MISSION SHOULD RESPOND TO DEMARCHES IN REFTELS A AND B ALONG FOLLOWING LINES:

(A) TO DATE U.S. HAS NO EVIDENCE TO INDICATE THAT PHOSPHATE ROCK OR PHOSCHEM HAVE VIOLATED U.S. DOMESTIC LAW OR OBLIGATIONS, NEVERTHELESS, THE ENTIRE U.S. PHOSPHATE

FERTILIZER INDUSTRY (I. E. PHOSPHATE ROCK PRODUCERS AND PHOSPHATE ROCK PROCESSORS) IS UNDER CONTINUING FEDERAL GRAND JURY INVESTIGATION OF DOMESTIC LAWS, AND EC AND FRENCH CHARGES AND THE RELEVANT FACTS WILL BE CAREFULLY EXAMINED; (B) THERE IS NO SOLID EVIDENCE YET OF PRICE DIFFERENTIALS FOR COMPARABLE ROCK AT SAME LEVEL OF TRADE, TAKING INTO ACCOUNT DIFFERENCES CAUSED BY FREIGHT, ETC.; (C) JUSTICE DEPARTMENT HAS AGREED TO DISCUSS MATTER WITH EC COMMISSION STAFF IN SEPTEMBER AND IS PREPARED TO

EXCHANGE INFORMATION NOT SUBJECT TO SECRECY RULES OF GRAND JURY INVESTIGATION; (D) IN THE MEANTIME USG WOULD WELCOME RECEIVING ANY EVIDENCE AVAILABLE TO EC COMMISSION OR TO EC MEMBER STATES REGARDING COLLUSION BETWEEN PHOSROCK AND FOREIGN PHOSPHATE ROCK PRODUCERS TO FIX PRICES AND ANY EVIDENCE CONCERNING DISCRIMINATORY PRICING ON THE PART OF PHOSCHEM WITH RESPECT TO PHOSPHATE FERTILIZER; (E) BEFORE ANY ACTION CAN BE TAKEN ON RELATIONSHIP OF PHOSPHATE FERTILIZER PRICES TO PHOSPHATE ROCK PRICES WE NEED TO KNOW MORE FACTS ABOUT ACTUAL PRICES IN U.S. AND EC. ALSO WE NEED TO KNOW IMPORTANCE OF INCREASED US EXPORTS OF FERTILIZER IN TOTAL SUPPLY PICTURE OF EC.

9. FOR AMEMBASSY PARIS: DAVIDOW MET WITH FRENCH EMBASSY COMMERCIAL ATTACHE TORDJMAN ON AUGUST 10 TO DISCUSS FRENCH COMPLAINT. DAVIDOW WOULD BE PLEASED TO MEET WITH APPROPRIATE FRENCH AUTHORITIES TO DISCUSS MATTER FURTHER WHEN HE IS IN PARIS SEPTEMBER 27-29 TO LIMITED OFFICIAL USE

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ATTEND OECD RESTRICTIVE BUSINESS PRACTICES COMMITTEE MEETING. RESPONSE TO FRENCH DEMARCHE WILL BE MADE LATER AFTER ADDITIONAL INFORMATION REQUESTED IN REFTEL D HAS BEEN EXAMINED. ROBINSON

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Draft Date: 13 AUG 1976
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Disposition Action: RELEASED
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